Court No.1

Civil Misc.Writ Petition No. 1938 (S/S) of 2001
(Old No. 2802 of 2000).

Ashok Kumar …… Petitioner.

Versus

Director, Local Bodies, Lucknow
And six others.
…… Respondents.

AND

Civil Misc.Writ Petition No.570 (S/S) of 2001
(Old No.551 of 2001)

Pratap Singh Bhauryal ……. Petitioner

Versus

Municipal Board.Nainital
And four others. …… Petitioners.

Hon'ble P.C. Verma, J.

Since both these writ petitions are connected with each other, hence both are being disposed of by a common order.

Petitioner Ashok Kumar filed this writ petition seeking writ of mandamus to allow him to join in the office of Nagar Palika Parishad, Nainital as he has been sent on deputation by the Commissioner, Kumaon Division, Nainital from Nagar Palika Parishad, Rudrapur (Udham Singh Nagar). According to the learned counsel for the petitioner, the Commissioner exercises the delegated power conferred upon him by the State Government and in exercise of that power Commissioner

has sent the petitioner on deputation in the office of Nagar Palika Parishad, Nainital.

The learned counsel for the petitioner failed to point out any direct provision providing for delegation of power by the State Government to the Commissioner delegating the power of the appointing authority, but relied on Sec.327 of U.P. Municipalities Act,1916, which reads as under :-

> "327. Delegation of powers by the State Government. The State Government may, by notification, delegate to the Prescribed Authority in respect of any specified municipality or municipalities within his or its jurisdiction any one or more of the powers vested in it by this Act, with the exception of the powers detailed in Schedule VII."

Sec.327 is in statute since 1916, while the provision for creation of Centralization of Services of Municipal Officers and Servants has been added by inserting Sec.69.B of U.P. Municipalities Act, 1916 in the year 1966 and in this Section there is no provision authorizing the State Government to delegate its power to the Commissioner while creating the U.P. Palika (Centralised) Services Rules, 1966. Under the Rules framed under Sec.69-B there is no direct provision for delegation of power of appointing authority by the State Government to the Commissioner.

The learned counsel for the petitioner relied on Sub Rule (2) of Rule 40 of the above Rules, which reads as under:-

> "40.(2) Matters not covered by these Rules shall be covered by such orders as the State Government my deem proper to issue."

On the strength of above quoted provision the learned counsel submitted that under the aforesaid provision State Government can delegate its power.

The argument of the learned counsel for the petitioner is misconceived. The provision, relied by the learned counsel for the petitioner, relates to removal of difficulties.

Learned counsel for the petitioner further relied the proviso of Sub-rule (1) to Rule 6 of the Palika (Centralised) Services Rules, 1966, which reads as under:-

> "6.Source of recruitment, absorption and determination of service of existing officers and servants. – (1) Subject to the provisions of sub-rules (2)-
>
> (I) The posts mentioned in Schedule I shall be filled in by promotion in the manner laid down in Rule 20.
>
> (II) The posts mentioned in Schedule –II shall be filled in by direct recruitment in the manner laid down in Part, V, of these Rules,
>
> (III) The posts mentioned in Schedule-III shall be filled in equally from two sources and in the manner mentioned above, so, however, that the odd post, if any, shall be filled in by promotion,
>
> Provided that if suitable candidates are not available in the number required under this sub-rule of recruitment by promotion or by direct recruitment, as the case may be, the deficiency may be made good from the other of the two sources or a temporary appointment may be made by deputation from amongst the officers serving under Government."

From the perusal of above proviso, it is clear that temporary appointment is to be made by deputation if suitable candidates are not available either by promotion or by direct recruitment. The proviso does not provide for delegation of power by State Government to Commissioner.

No any other provision could be pointed out by the learned counsel for the petitioner authorizing the State Government to delegate its power to the Commissioner. Therefore, the order passed by the Commissioner is without competence.

Since, the order has been passed by an authority who is not competent to pass the order no mandamus could be issued to enforce the said order. For the reasons recorded above, the writ petition has no merits and is dismissed. No order as to costs. However, it is made clear that petitioner shall be permitted to join at Rudrapur (Udham Singh Nagar) and his arrears of salary shall be paid to him according to leave rules and absence of service shall not be treated the break in service.

This order shall govern in writ petition No. 570 (S/S) of 2001, Pratap Singh Bhauryal versus Municipal Board, Nainital & others.

(Hon'ble P.C. Verma, J.)

09.8.2001
P.Singh